IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7951 OF 2005.

Satish Ramjidas Khanna. ... Petitioner.

V/s.

Kumar Chandrasen Asher
and others. ... Respondents.

B.K.Raje for the petitioner.

P.M.Shah for respondent No.1.

CORAM: V.C.DAGA, J.

DATED: 24th November 2005.

P.C.:

. Heard learned counsel for the parties.

2. This petition is directed against the judgment and order dated 3rd October, 2005 passed by the Division Bench of the Small Causes Court in Appeal No.435 of 1999, whereby the decree for possession dated 16th June, 1999 passed by the Small Causes Court in L.E. & C. Suit No.119/156 of 1981 came to be confirmed.

3. The learned counsel appearing for the petitioner canvassed his first submission that one co-owner cannot file suit and that all the legal heirs were required to be brought on record. This submission has no merit in view of the judgment of the Apex Court in **Kanta Goyal v. B.J.Pathak**, 1977 (2) SCC 814.

4. The second contention sought to be raised is that there was subsisting licence between the petitioner and the respondent with the consent of the original landlord. This submission is also devoid of any substance in view of the admitted position that the original licence agreement was for a period of 11 months from 1st February, 1971 to 31st December, 1971. It was to be renewed only for one block of 11 months. The agreement came to an end on 30th November, 1972. It was not renewed thereafter, as such there was no authorisation in favour of the petitioner to remain in the occupation of the suit premises.

5. Learned counsel for the petitioner by way of third contention tried to canvas that the agreement in question was not a leave and licence agreement but it was a rent-deed. This case has not been proved by the petitioner either by entering into witness box or by any other mode or means of any other evidence. Even case was not put to the witness of the plaintiff in his cross-examination. The submission in this behalf, at this stage, is devoid of any substance.

6. The learned counsel for the petitioner also tried to canvas and base his right on the basis of section 14 of the Bombay Rents and Lodging House Rates Control Act, 1947 to contend that the petitioner was a lawful sub-tenant of the premises on 1st February, 1973. As already pointed out the licence period came to an end on 30th November, 1972. Thereafter the possession of the petitioner was unlawful. No benefits could be claimed or allowed to be claimed on the basis of section 14 of the Act. Mere possession is not sufficient but the possession must be that of sub-tenant as contemplated under section 14 of the Act.

7. The learned counsel for the petitioner, lastly, tried to raise a dispute with regard to the area of the suit premises. Both the Courts below have recorded concurrent findings against the petitioner on this count, which are based on appreciation of evidence on record. No interference with the said findings is, thus, called for, especially, in exercise of writ jurisdiction under Article 227 of the Constitution of India.

8. So far as contention regarding document (Exh.B) is concerned, learned counsel for the petitioner submits that the said document was not taken into account of the Courts below. The said document was unilateral document to which the otherside is not a party. It would hardly be of any assistance to the petitioner. No other contention other than the contentions dealt with hereinabove was raised.

9. The petition is, thus, dismissed in limine with no order as to costs.

(V.C.DAGA, J.)